

day period or 15 working days for each 180-day period.

b. It shall be presumed that temporary employment of such a licensed individual is undertaken solely to avoid revocation of a license or permit. Such minimal employment shall be *prima facie* evidence of lack of supervision.

D. Mitigation.

1. \$1,000 penalties shall not be mitigated unless the broker can show that extraordinary mitigating factors are present.

2. \$5,000 penalties for failure to produce documents may be mitigated to an amount between \$2,000 and \$3,500 if the documents are produced but not in a timely fashion. No mitigation shall be afforded if the documents are not produced, unless the broker can satisfactorily demonstrate that such failure to produce was caused by circumstances beyond the control of the broker or his client (e.g., a rupture of relations with the party responsible for generating the documents). Full mitigation shall be afforded in the case of destruction of records by events beyond a broker's control, such as theft, flood, fire or other acts of God.

3. \$5,000 penalty for failure to have a working knowledge of any operation for which a broker is licensed to do business may be mitigated to a lesser amount upon a showing by the broker that steps have been taken to improve instruction and supervision of employees and an improvement in the knowledge of his operation occurs.

4. \$5,000 penalty for failure to exercise responsible supervision and control may be mitigated to a lesser amount if the broker immediately corrects the problem which was the basis for the assessment and sufficiently monitors the situation to avoid recurrence.

5. \$10,000 penalty for failure to maintain satisfactory accounting records will only be subject to mitigation in full if the broker can prove that satisfactory accounting records and documents records are being kept. Mitigation in a lesser degree may be afforded upon a showing by the broker that a *bona fide* attempt was made to establish a satisfactory accounting and/or record-keeping system, or upgrade a deficient system, but such efforts proved unsuccessful or only partially effective.

6. Penalty equal to the value of monies not properly paid or accounted for.

a. If the broker shows that the monies were paid or accounted for and requisite notifications were made, albeit in an untimely fashion not to exceed 30 days after any due date, the penalty may be mitigated upon payment of 25 percent of the assessed amount, but no less than \$250.

b. If the monies were paid and notifications made more than 30 days after any due date, the penalty may be mitigated upon payment of 50 percent of the assessed amount, but not less than \$1,000.

c. If there is no proof of proper payment of duties, refunds, etc., no mitigation shall be granted.

## XII. LIMITS OF PENALTY ASSESSMENTS

A. A broker shall be penalized a maximum of \$30,000 for any violation or violations of the statute in any one penalty notice.

B. If a broker is penalized to the maximum the statute will allow and continues to commit the same violation or violations, revocation or suspension of his license would be the appropriate sanction. Barring such revocation or suspension action, he may again be penalized to the maximum the statute will allow.

C. From any one audit, the maximum aggregate penalty for all violations discovered is \$30,000.

## XIII. CONSOLIDATION OF CASES

Whenever multiple penalties arising from a particular fact situation or pattern are contemplated against brokers or individuals operating in different districts, the cases may be consolidated in one district. Approval for consolidation must be sought from the Brokers Compliance Branch, Office of Trade Compliance at Headquarters.

[T.D. 90-20, 55 FR 10056, Mar. 19, 1990, as amended by T.D. 97-82, 62 FR 51771, Oct. 3, 1997; T.D. 99-27, 64 FR 13676, Mar. 22, 1999]

## PART 172—LIQUIDATED DAMAGES

### Sec.

#### 172.0 Scope.

##### Subpart A—General Provisions

172.1 Notice of liquidated damages incurred and right to petition for relief.

172.2 Failure to petition for relief.

##### Subpart B—Application for Relief

172.11 Petition for relief.

172.12 Filing of petition for relief.

##### Subpart C—Action on Petitions

172.21 Petitions acted on by Fines, Penalties, and Forfeitures Officer.

172.22 Special cases acted on by Fines, Penalties, and Forfeiture Officer.

172.23 Limitations on consideration of petitions.

##### Subpart D—Disposition of Petitions

172.31 Act or omission did not occur.

172.32 Limitation on time decision effective.

172.33 Supplemental petitions for relief.

AUTHORITY: 19 U.S.C. 66, 1623, 1624.

**§ 172.0 Scope.**

This part contains provisions relating to the giving of notice of liquidated damages incurred under the terms of any bond posted with Customs, the filing of petitions for relief from liquidated damages incurred, and the consideration of such petitions.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970]

**Subpart A—General Provisions****§ 172.1 Notice of liquidated damages incurred and right to petition for relief.**

(a) *Notice of liquidated damages incurred.* When there is a failure to meet the conditions of any bond posted with Customs, the principal shall be notified in writing of any liability for liquidated damages incurred by him and a demand shall be made for payment. The sureties on such bond shall also be advised in writing, at the same time as the principal, of the liability for liquidated damages incurred by the principal.

(b) *Notice of right to petition for relief.* The notice shall also inform the principal and his sureties on the bond that application may be made for relief from payment of liquidated damages under section 623(c), Tariff Act of 1930, as amended (19 U.S.C. 1623(c)), or any other applicable statute authorizing the cancellation of any bond or of any bond charge that may have been made against such bond.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970]

**§ 172.2 Failure to petition for relief.**

(a) *Referral of claim to Department of Justice.* If any party liable for liquidated damages fails to petition for relief or to pay or make arrangements to pay the liquidated damages within 30 days from the date of mailing of the notice of the liquidated damages incurred, as provided in § 172.1 (except for sureties who are provided a separate petitioning period under § 172.12(b)), or within such additional time as may have been granted, the Fines, Penalties, and Forfeitures Officer shall promptly refer the claim to the Department of Justice.

(b) *Absence from the U.S.* If it appears that the parties liable for liquidated

damages are absent from the U.S. or were absent for more than 20 days during the 30-day period referred to in paragraph (a) of this section, the Fines, Penalties, and Forfeitures Officer may withhold such referral for a reasonable time unless other action is expressly authorized by the Commissioner of Customs.

[T.D. 87-51, 52 FR 12151, Apr. 15, 1987, as amended by T.D. 99-27, 64 FR 13676, Mar. 22, 1999]

**Subpart B—Application for Relief****§ 172.11 Petition for relief.**

(a) *To whom addressed.* Petitions for relief shall be addressed to the Commissioner of Customs.

(b) *Form.* A petition for relief need not be in any particular form. Such petition shall set forth the facts relied upon by the petitioner to justify cancellation of the claim for liquidated damages, and shall be signed by the petitioner, his attorney at law, or a customhouse broker representing the petitioner. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory employee thereof, an attorney at law, or a customhouse broker representing the corporation.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 73-141, 38 FR 13556, May 23, 1973]

**§ 172.12 Filing of petition for relief.**

(a) *Where filed.* A petition for relief shall be filed with the Fines, Penalties, and Forfeitures Officer for the port where the liability for liquidated damage is incurred.

(b) *When filed.*

(1) Except with respect to sureties, a petition for relief shall be filed within 60 days from the date of mailing of the notice of the liability for liquidated damages incurred unless an extension of such period has been granted by the Fines, Penalties, and Forfeitures Officer.

(2) The surety will receive notice to pay the liquidated damages if the principal fails to either timely file a petition or to pay or make arrangements to pay the liquidated damages. The notice will be sent to the surety within 10

days after the expiration of the principal's 60-day petitioning period or as soon thereafter as possible. The surety will then have an additional 60 days from the date of this notification to file its own petition for relief.

(c) *Number of copies.* The petition shall be filed in duplicate.

[T.D. 70–249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 87–51, 52 FR 12152, Apr. 15, 1987; T.D. 92–84, 57 FR 40607, Sept. 4, 1992; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

### Subpart C—Action on Petitions

#### § 172.21 Petitions acted on by Fines, Penalties, and Forfeitures Officer.

The Fines, Penalties, and Forfeitures Officer may cancel any claim for liquidated damages incurred on such terms and conditions as, under the law and in view of the circumstances, he shall deem appropriate when the claim is \$100,000 or less.

[T.D. 85–25, 50 FR 7336, Feb. 22, 1985, as amended by T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

#### § 172.22 Special cases acted on by Fines, Penalties and Forfeitures Officer.

(a) *Nonproduction of documents in general.* Fines, Penalties, and Forfeitures Officers are hereby authorized to treat any bond charge for the production of a missing document as satisfied upon payment by the principal or surety of the sum of \$25 as liquidated damages for each missing declaration of the consignee or other document, except shippers' export declarations and special Customs and commercial invoices, not produced within the time prescribed by law or regulations or any lawful extension of such time.

(b) *Nonproduction of commercial invoices.* If a required commercial invoice is not produced (1) on the date the entry or entry summary is filed, (2) within 120 days after the date the entry or entry summary is required to be filed, or (3) if the invoice is needed for statistical purposes, within 50 days after the date the entry or entry summary is required to be filed, then unless the production is waived under the provisions of § 141.92 of this chapter, the bond charge for the production thereof may be canceled by the Fines,

Penalties, and Forfeitures Officer upon the payment of \$25 as liquidated damages, if:

(i) The party who made the entry submits an application for relief explaining in detail why the commercial invoice could not be produced within the prescribed period; and

(ii) The Fines, Penalties, and Forfeitures Officer is satisfied by such application or otherwise that the failure to produce the invoice within the prescribed period was due to causes wholly beyond the control of the party making the entry and not to any purpose of the foreign seller or shipper to withhold information required by law, regulation, or special instruction to be shown on the invoice.

(c) *Nonproduction of free-entry or reduced-duty documents.* When free entry or the application of a reduced rate of duty is dependent upon the production of a document which the importer fails to produce, or when a conditionally free or reduced duty provision claimed on entry is held to be inapplicable, the claim for free entry or reduced rate of duty shall be treated by the port director as abandoned upon the assessment and payment of duty and the bond (or, in the case of a continuous bond, the charge against the bond) given for the production of the free-entry or reduced-duty document may be cancelled without the collection of liquidated damages.

(d) *Failure to file timely entry summary after release under entry or immediate delivery permit.* (1) If an entry summary for merchandise not subject to quota has not been timely filed after release under an entry or under a special permit for immediate delivery, the port director shall issue a demand for liquidated damages in accordance with § 142.15 or § 142.27 of this chapter, and in accordance with guidelines published by the authority of the Commissioner of Customs. The demand shall be cancelled in accordance with guidelines published by the authority of the Commissioner of Customs.

(2) If the Fines, Penalties, and Forfeitures Officer is satisfied that the violation occurred solely because of a delay in the return by Customs to the importer or broker of documents necessary to file the entry summary, he

may cancel such liquidated damages without payment.

(3) If collection of an amount greater than that established in accordance with this section appears warranted, the case shall be forwarded to the Commissioner of Customs for disposition.

(4) In the case of an entry summary which has not been filed, the Fines, Penalties, and Forfeitures Officer may not grant relief from a demand for liquidated damages until the entry summary has been filed.

(e) *Failure to timely deliver merchandise traveling in-bond.* (1) If merchandise traveling under bond is not delivered to the port of destination or exportation within time limits established by §§ 18.2(c)(2), 122.119(b) or 122.120(c) of this chapter and liquidated damages are assessed for violation of the provisions of § 18.8(b) of this chapter, notwithstanding other delegations of authority, the demand shall be cancelled by the port director in accordance with guidelines issued by the Commissioner of Customs.

(2) If the in-bond manifest is not delivered to the port director as required by § 18.2(d) or § 18.7(a) of this chapter and liquidated damages are assessed for violation of the provisions of § 18.8(b) of this chapter, notwithstanding any other delegation of authority, the demand shall be cancelled by the port director in accordance with guidelines issued by the Commissioner of Customs.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 75-229, 40 FR 43026, Sept. 18, 1975; T.D. 77-27, 42 FR 3162, Jan. 17, 1977; T.D. 79-221, 44 FR 46830, Aug. 9, 1979; T.D. 84-209, 49 FR 39050, Oct. 3, 1984; T.D. 84-213, 49 FR 41186, Oct. 19, 1984; T.D. 85-39, 50 FR 9612, Mar. 11, 1985; T.D. 85-167, 50 FR 40363, Oct. 3, 1985; T.D. 91-71, 56 FR 40780, Aug. 16, 1991; 56 FR 48823, Sept. 26, 1991; T.D. 99-27, 64 FR 13676, Mar. 22, 1999]

#### **§ 172.23 Limitations on consideration of petitions.**

No action looking to relief from the payment of full liquidated damages shall be taken on any petition, irrespective of the amount involved, if the claim has been referred to the Depart-

ment of Justice for collection as provided in § 172.2.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 87-51, 52 FR 12152, Apr. 15, 1987]

### **Subpart D—Disposition of Petitions**

#### **§ 172.31 Act or omission did not occur.**

(a) *Definite.* If it is definitely determined that the act or omission forming the basis for a claim for liquidated damages did not in fact occur, the claim shall be cancelled by the Fines, Penalties, and Forfeitures Officer. If the liquidated damages have already been paid, they shall be refunded by Customs, and an appropriate notation shall be made on Customs Form 5955-A, if the transaction has already been recorded thereon.

(b) *Dependent upon a construction of law.* When the determination of whether or not the claim was erroneously made depends upon a construction of law, the claim shall not be cancelled without the approval of the Commissioner of Customs, unless there is in force a ruling decisive of the issue.

(c) *Doubtful cases.* Approval of the Commissioner of Customs shall be requested in all doubtful cases.

[T.D. 74-227, 39 FR 32023, Sept. 4, 1974, as amended by T.D. 99-27, 64 FR 13677, Mar. 22, 1999]

#### **§ 172.32 Limitation on time decision effective.**

A decision to cancel a claim for liquidated damages on condition that a stated amount be paid shall be effective for not more than 60 days from the date of notice to the parties of such decision, unless the decision itself prescribes a different effective period or the decision is later amended to change the effective period. If payment of the stated amount is not made, or arrangements made for delayed payment or installment payments, or a supplemental petition filed, within the effective period, the full claim for liquidated damages shall be deemed applicable and, after required collection action, shall

be promptly referred to the U.S. attorney unless other action has been directed by the Commissioner of Customs.

[T.D. 70–249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 79–160, 44 FR 31962, June 4, 1979]

**§ 172.33 Supplemental petitions for relief.**

(a) *Time and place of filing.* If the interested parties are not satisfied with a decision of the Fines, Penalties, and Forfeitures Officer or the Commissioner of Customs, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer by the interested parties. Such a petition shall be filed either:

(1) Within 30 days from the date of notice to the petitioner of the decision from which further relief is requested if no effective period is prescribed in the decision; or

(2) Within the time prescribed in the decision from which further relief as requested as the effective period of the decision.

(b) *Consideration—(1) Decisions of the Fines, Penalties, and Forfeitures Officer.* Where a supplemental petition requests further relief from a decision of the Fines, Penalties, and Forfeitures Officer, he may grant additional relief, if he believes it is warranted, in cases in which he has the authority to grant relief in accordance with the provisions of § 172.21. Supplemental petitions for further relief in cases initially decided by the Fines, Penalties, and Forfeitures Officer in accordance with the provisions of § 172.21, together with all pertinent documents, shall be forwarded to the designated Headquarters official if:

(i) There has been a specific request by the petitioner for review by the designated Headquarters official; or

(ii) The Fines, Penalties, and Forfeitures Officer believes no additional relief is warranted.

(2) *Decisions of the Commissioner of Customs.* A supplemental petition appealing a decision of the Commissioner of Customs shall be filed, together with all pertinent documents, with the Fines, Penalties, and Forfeitures Officer who initiated the case for trans-

mittal to the Commissioner of Customs for reconsideration.

(c) *Second supplemental petition.* (1) Only one further supplemental petition may be filed appealing a decision made with respect to an initial supplemental petition. The second supplemental petition will not be accepted unless accompanied or preceded by full payment of all liquidated damages determined to be due in the decision rendered on the first supplemental petition. Such payment must be made within 60 days from the date of notice to the petitioner of the decision on the first supplemental petition if no effective period is prescribed in the decision, or within such time prescribed, if any. The second supplemental petition should be filed with the Fines, Penalties, and Forfeitures Officer who initiated the case.

(2) A second supplemental petition will not be considered except in one of the following circumstances:

(i) If it is filed within 2 years from the date of notice to the petitioner of the decision on the first supplemental petition;

(ii) If it is filed within 30 days following an administrative or judicial decision which reduces the loss of duties upon which the mitigated penalty amount was based; or

(iii) If the deciding official in his discretion determines that the acceptance of a second supplemental petition is warranted.

[T.D. 70–249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 75–36, 40 FR 5146, Feb. 4, 1975; T.D. 84–18, 49 FR 1680, Jan. 13, 1984; T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 87–51, 52 FR 12152, Apr. 15, 1987; T.D. 91–71, 56 FR 40780, Aug. 16, 1991; T.D. 99–27, 64 FR 13677, Mar. 22, 1999]

**PART 173—ADMINISTRATIVE REVIEW IN GENERAL**

Sec.

173.0 Scope.

173.1 Authority to review for error.

173.2 Transactions which may be reviewed and corrected.

173.3 Voluntary reliquidation.

173.4 Correction of clerical error, mistake of fact, or inadvertence.

173.4a Correction of clerical error prior to liquidation.